

AUSA: MJE

County: Spokane

State of Washington )

:ss

County of Spokane )

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Feb 09, 2023

SEAN F. McAVOY, CLERK

*In re Affidavit in Support of a Criminal Complaint and Arrest Warrant as to Michael Brian Ross*

**AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT**

I, C. Todd Smith, being first duly sworn, hereby depose and state as follows:

**INTRODUCTION AND AGENT BACKGROUND**

1. I make this affidavit in support of a criminal complaint seeking the arrest of Michael Brian ROSS for violating 18 U.S.C. §§ 922(g)(1), 924(a)(8), Felon in Possession of a Firearm. Based on my training and experience and the facts as set forth in this affidavit, I submit there is probable cause to believe that ROSS has committed this federal criminal law violation.

2. Your Affiant, C. Todd Smith, is a Senior Special Agent (SA) with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and has been so employed since September of 2002. Prior to being hired by ATF, your affiant was a police officer and investigator with the Knoxville Police Department in Knoxville, Tennessee for approximately 7 years. Your affiant has received over two years of specialized training during his law enforcement career and has investigated hundreds of felony crimes that resulted in both state and Federal prosecution. Your affiant is also an ATF interstate nexus expert and has received specialized training regarding firearms and ammunition as it pertains to interstate commerce and the identification and function of firearms and/or ammunition.

3. Your Affiant, being duly sworn, states the following to be true and correct to the best of his knowledge and belief based upon his personal observations and from information provided by knowledgeable law enforcement agents and officers who are involved in the investigation of Michael Brian ROSS. Your affiant has not included all information known to law enforcement pertaining to ROSS and this investigation, but has included the facts deemed necessary to set forth probable cause in support of this search warrant.

### **INVESTIGATION**

4. On February 8, 2023, at approximately 0900hrs, Washington State Department of Corrections (DOC) Officers Jeremy Wilson and Pat Green detained Michael Brian ROSS (W/M, DOB 6/14/82, FBI # 983977VB2) for a DOC warrant (violation for failure to report) at the Spokane DOC office located at 1821 North Maple Street, in Spokane, Washington. ROSS arrived alone for this meeting driving a 2022 Chevy Silverado truck with WA license plate D19170A. The Silverado was registered to both ROSS and another individual, identified later in this affidavit as a Source of Information (SOI).

5. DOC officers received authorization to search this vehicle under DOC policy and they used the keys on the person of ROSS to gain entry to the vehicle, which was located in the parking lot in front of the DOC offices at this address. The DOC officers, acting on information from the Source of Information (SOI), looked underneath the dash panel below the steering wheel where they observed the muzzle of what appeared to be a semi-automatic handgun. Agents stopped this search without removing the firearm and contacted ATF Spokane due to ROSS being on DOC supervision for a felony crime that would possibly prohibit him from possessing firearms and/or ammunition.

6. Acting on this information, SA Smith (your affiant) applied for and received a Federal search warrant (2:23-mj-00050-JAG) to search ROSS' truck for firearms and/or ammunition. The truck remained on video and was secured with evidence tape pending the execution of the Federal search warrant. This original search warrant and affidavit is incorporated by reference as an attachment for this criminal complaint affidavit (see Attachment A) and it contains the original information used to establish probable cause for the search warrant.

7. At 1815hrs on February 8, 2023, your affiant along with other ATF agents and DOC officers executed this search warrant on the vehicle. Agents looked underneath the dashboard on the drivers side of the vehicle and located the suspected handgun where it had previously been observed by DOC officers.

8. The firearm was a Sig-Sauer Model P365, 9mm semi-automatic handgun, with serial number 66B651574 or 66B65157X, with an inserted Sig brand magazine. The last digit of the serial number is partially obstructed by oil/dust and while agents believe it was a "4", it was not fully visible and agents did not want to contaminate the firearm prior to forensic examination. The front and rear sights of the handgun had been removed from the slide of this handgun.

9. The pistol did not have a round in the chamber, but the magazine was found to contain 9 rounds of 9mm ammunition with headstamps (a stamping on the bottom of the cartridge casing) of "Hornady", "FC", "GFL", and "TRN". These headstamps denote the manufacturer of the ammunition or cartridge casing. The aforementioned pistol, magazine, and ammunition were seized by ATF as evidence and the items will be submitted for forensic examination (fingerprints and/or DNA swabs).

10. Agents contacted ROSS and advised him that he was under arrest for a violation of Title 18, USC, Section 922(g)(1) (felon in possession). ROSS was advised of his Miranda rights by ATF SA Mike Phelps and he invoked his right to an attorney and no statement was made regarding the firearm and/or ammunition.

11. Your affiant is an ATF interstate nexus expert who has received specialized training from ATF for the purposes of identifying firearms and/or ammunition and their origin pertaining to travel in interstate commerce. The Sig-Sauer firearm was stamped "Newington, NH USA" (thus identifying New Hampshire as the firearm's place of manufacture). It is the opinion of your affiant that the firearm described above was not manufactured in the state of Washington and has therefore travelled in and/or affected interstate commerce.

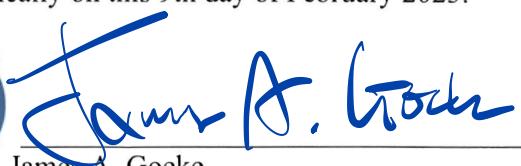
12. Based on the aforementioned facts, your affiant believes that probable cause exist that on or about February 8, 2023, ROSS possessed a firearm in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(8).

Respectfully submitted,



C. Todd Smith  
Special Agent  
Bureau of Alcohol, Tobacco, Firearms and  
Explosives

Sworn to telephonically and signed electronically on this 9th day of February 2023.



James A. Goeke  
United States Magistrate Judge

**ATTACHMENT A**

AO 106 (04/10) Application for a Search Warrant

UNITED STATES DISTRICT COURT  
for the Eastern District of Washington

**In the Matter of the Search of:**

Search of a 2022 Chevy Silverado LTD, bearing )  
license plate D19170A, further described in )  
Attachment A. ) Case No. 2:23-mj-00050-JAG

**APPLICATION FOR SEARCH WARRANT**

I, C. Todd Smith, a federal law enforcement officer or attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that there is now concealed on the following person or property: Search of a 2022 Chevy Silverado LTD, bearing license plate D19170A, further described in Attachment "A" attached hereto and incorporated herein by this reference located in the EASTERN District of WASHINGTON, there is now concealed: See Attachment B, attached hereto and incorporated herein by this reference.

The basis for the search under Fed. R. Crim. P. 41(c) is

- evidence of a crime;
- contraband, fruits of crime, or other items illegally possessed;
- property designed for use, intended for use, or used in committing a crime;
- a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

18 U.S.C. § 922(g)(1) – Felon in Possession of Firearm

The application is based on these facts:

- Continued on attached sheet.
- Delayed notice of days (give exact ending date if more than 30 days: \_\_\_\_\_) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.



Applicant's signature

C. Todd Smith, Special Agent, ATF

Sworn to before me and signed electronically in my presence.

Sworn to telephonically and signed electronically.

Date: February 8, 2023



Judge's signature

City and state: Spokane, Washington

James A. Goeke, U.S. Magistrate Judge

*AUSA Assigned: MJE*

*County of Investigation: Spokane*

*In the Matter of the Search of a 2022 Chevy Silverado LTD, bearing license plate D19170A.*

**AFFIDAVIT IN SUPPORT OF AN APPLICATION**  
**UNDER RULE 41 FOR A WARRANT TO**  
**SEARCH AND SEIZE**

I, C. Todd Smith, being first duly sworn, hereby depose and state as follows:

**INTRODUCTION AND AGENT BACKGROUND**

1. I make this affidavit in support of an application under Rule 41 of the Federal Rules of Criminal Procedure for a search warrant authorizing the search of a 2022 Chevy Silverado LTD, bearing license plate D19170A (hereinafter “TARGET VEHICLE”), further described in Attachment A, for the evidence, fruits, and instrumentalities described in Attachment B. Attachments A and B are incorporated by reference.

2. Your Affiant, C. Todd Smith, is a Senior Special Agent (SA) with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and has been so employed since September of 2002. Prior to being hired by ATF, your affiant was a police officer and investigator with the Knoxville Police Department in Knoxville, Tennessee for approximately 7 years. Your affiant has received over two years of specialized training during his law enforcement career and has investigated hundreds of felony crimes that resulted in both state and Federal prosecution. Your affiant is also an ATF interstate nexus expert and has received specialized training regarding firearms and ammunition as it pertains to interstate commerce and the identification and function of firearms and/or ammunition.

3. Your Affiant, being duly sworn, states the following to be true and correct to the best of his knowledge and belief based upon his personal observations and from information provided by

knowledgeable law enforcement agents and officers who are involved in the investigation of Michael ROSS. Your affiant has not included all information known to law enforcement pertaining to ROSS and this investigation, but has included the facts deemed necessary to set forth probable cause in support of this search warrant.

4. As a result of my training and experience as an ATF Special Agent, I am familiar with federal criminal laws and know that it is a violation of Title 18 United States Code § 922(g)(1), for any person who has been convicted of a felony crime punishable by a term of imprisonment exceeding one year, to possess a firearm and/or ammunition, that has travelled in or affected interstate commerce (commonly referred to as Felon in Possession).

**PROBABLE CAUSE**

5. Michael ROSS is currently being supervised by Washington Department of Corrections (DOC) for Criminal Mischief with a Deadly Weapon-Domestic Violence.

6. On February 2, 2023, Community Corrections Officer (CCO) Wilson with the DOC received a call from a person known to him from his official duties who is hereby referred to in this affidavit as “Source of Information” (SOI). The SOI told CCO Wilson that ROSS was using methamphetamine heavily and carrying a handgun around with him. The SOI provided that the gun was a “9 or 40” (believed by investigators to be common terminology referencing a 9mm or .40 caliber pistol). The SOI further described the firearm as small and dark-colored. CCO Wilson attempted to get ROSS to report in person on Thursday, February 2, 2023, but ROSS did not respond to texts or calls. Subsequently, DOC issued a state arrest warrant for ROSS on February 6, 2023.

7. On February 7, 2023, CCO Wilson received a text from ROSS claiming he (ROSS) had lost his phone, and just got CCO Wilson’s text directing him (ROSS) to report on February 2

instead of February 3. ROSS stated to CCO Wilson that he would report at 9 AM on February 8, 2023.

8. At 1:43 a.m. on February 8, 2023, the SOI sent a lengthy text to CCO Wilson stating that ROSS had assaulted him/her, that ROSS was behaving in a paranoid manner, ROSS was heavily using narcotics, and that he/she was afraid that ROSS would harm him/her.

9. On February 8, 2023, ROSS showed up to the DOC location at approximately 8:50 AM. A urine analysis sample was taken but it was negative. Your affiant spoke with Officer Wilson who routinely tests persons he supervises for methamphetamine and other narcotics. Officer Wilson stated that in his experience if a person does not use methamphetamine for approximately 3-5 days prior to testing they will likely be negative. ROSS had driven to the DOC location in a 2022 Chevy Silverado LTD, Gray, bearing Washington license plate D19170A (the “TARGET VEHICLE”).

10. CCO Wilson later spoke to the SOI in person. CCO Wilson observed what appeared to be older (yellow-green) bruises on the left side of his/her face. The SOI stated ROSS assaulted him/her, but he/she was hesitant to file a report. The SOI stated that he/she was frequently with ROSS and that ROSS regularly carried the aforementioned pistol. The SOI stated that when ROSS does not have the pistol on his person, it is placed underneath the driver’s side dash area (under the steering wheel) of his pickup. The SOI stated that ROSS is the sole driver of the pickup (which is registered to both ROSS and the SOI with Washington State). The SOI stated that on one occasion, months ago, he/she did pick up the vehicle after it was impounded, but ROSS was the primary operator of the vehicle. The SOI stated that ROSS brandished the pistol at him/her last Wednesday and threatened him/her with it at the Brown Bear car wash on Sunset Highway (West Spokane). The SOI again stated that this pistol was a small and dark colored “9 or 40” caliber semi-automatic handgun.

11. The SOI stated that he/she believed that ROSS possessed the handgun on February 8, 2023, and if ROSS was coming into the DOC office (to report as ordered) that he (ROSS) would likely hide the firearm under the dash as described above.

12. CCO Wilson relayed this information to his supervisor and confirmed that ROSS is prohibited under his DOC supervision rules (court ordered) from possessing firearms and/or ammunition. Officer Wilson has reviewed this affidavit and concurs with the information attributed to him as true and correct to include the information provided by the SOI. Officer Wilson stated that he believed he had reasonable suspicion that if a DOC search of ROSS' vehicle was conducted, that evidence would be located that would constitute a violation(s) of supervision. The DOC supervisor approved the subsequent search.

13. On February 8, 2023, CCO Wilson used ROSS' keys to unlock the TARGET VEHICLE to conduct a DOC search. During this brief search, CCO Webb observed what appeared to be the muzzle of a dark colored handgun sticking out from the right-most area of the liner/dash area, which was the hiding spot previously described by the SOI. CCO Webb took photos which have been reviewed by your affiant. One of the photos is depicted below:



14. CCO Wilson did not search further and locked up the vehicle in a secure area where it is under constant video surveillance pending action by ATF pursuant to the aforementioned violations to include this search warrant.

15. Your affiant reviewed this information provided by Officer Wilson to include the photographs of the suspected firearm in the area of the steering wheel as described above. Your affiant believes these photographs to show the muzzle or end of the barrel of a modern semi-automatic pistol. Your affiant further observed that the approximate barrel size, as observed in the photographs, would be consistent with a 9mm or 40 caliber (10mm) handgun.

16. The current make and model of the firearm is unknown and it is not discernible from the photographs nor do the photographs reveal if the "firearm" contains ammunition. However, the photographs do show an item that would be consistent with a modern semi-automatic firearm in the experience of your affiant. As the "firearm" has not yet been recovered and further identified, you affiant cannot state conclusively that the firearm and/or ammunition (if present) has travelled in or affected interstate commerce. Your affiant, who has been an interstate nexus expert for over 10 years in Washington, is not aware of any "mainstream" or large commercial manufacturer within the state of Washington who would produce a semi-automatic pistol of this type.

17. Currently, according to CCO Wilson, ROSS is being supervised for Criminal Mischief with a Deadly Weapon. ROSS previously has been arrested for Possession of a Stolen Firearm (7 Counts), Burglary 1<sup>st</sup> Degree, Assault 2<sup>nd</sup> Degree-DV, DUI, Theft 3<sup>rd</sup> Degree, Assault 4-DV, Telephone Harassment, Possession of Drug Paraphernalia and Driving while License Suspended. According to NCIC, ROSS has previously been convicted on March 31, 2008, of an Assault 2 charge, a B Class Felony, and sentenced to 84 months imprisonment by the Pierce County, Washington, Superior Court. ROSS has accordingly previously been convicted of an offense

punishable by a term of imprisonment exceeding one year and is consequently prohibited from possessing firearms and/or ammunition under 18 United States Code § 922(g)(1).

18. Due to the status of ROSS, who is subject to court ordered DOC supervision, a search warrant might not be legally necessary to seize the firearm/ammunition from ROSS' vehicle. However, your affiant and DOC both believe that the prudent thing to do under the aforementioned circumstances is to obtain this search warrant in lieu of a warrantless search as this violation, if proven, might be charged separately, or in Federal court, from the prior conduct for which ROSS is on supervision. ROSS was advised by DOC that he could not possess firearms or ammunition.

19. This violation occurred in the city of Spokane, in the County of Spokane, in the District of Eastern Washington.

### **CONCLUSION**

20. I respectfully submit that this affidavit supports probable cause for a search warrant authorizing the search of the TARGET VEHICLE for firearms and ammunition, as well as documents and other items indicative of ownership or possession of the TARGET VEHICLE. Your affiant knows from 27 years of experience as a law enforcement officer that persons who possess firearms often possess ammunition and/or other firearms. Your affiant knows from experience that persons who possess firearms often carry them on their person, in their vehicles where they are easily accessible, or they may possess firearms within their residence or other properties/items

controlled by them. These persons also often possess accessories, notes and receipts, packaging, and other indicia pertaining to firearms. Your affiant believes that the facts and circumstances as detailed above establish probable cause to conduct a full search of the described vehicle for the items listed above, which would be evidence of the crime of Felon in Possession of a firearm and/or ammunition.

Respectfully submitted,

C. Todd Smith, Special Agent  
Bureau of Alcohol, Tobacco, Firearms, &  
Explosives

Sworn to telephonically and subscribed to electronically,

this 8 day of February, 2023.



James A. Goeke  
United States Magistrate Judge

UNITED STATES DISTRICT COURT  
for the  
Eastern District of Washington

**In the Matter of the Search of:** )  
Search of a 2022 Chevy Silverado LTD, ) Case No.: 2:23-mj-00050-JAG  
bearing license plate D19170A, further )  
described in attachment A. )

## **SEARCH AND SEIZURE WARRANT**

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the Information associated with the following person or property: Search of a 2022 Chevy Silverado LTD, bearing license plate D19170A, as described in Attachment A, which is herein incorporated by reference.

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal: See Attachment B, which is herein incorporated by reference.

**YOU ARE COMMANDED** to execute this warrant on or before February 22, 2023 (*not to exceed 14 days*)

- in the daytime 6:00 a.m. to 10 p.m.       at any time in the day or night as I find reasonable cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to James A. Goeke.

*(United States Magistrate Judge)*

- Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (*except for delay of trial*), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (*check the appropriate box*)  
 for 90 days, which is \_\_\_\_\_.

February 8, 2023

Date and time issued: @ 5:56 p.m.



*Judge's signature*

City and state: Spokane Washington

James A. Goeke, U.S. Magistrate Judge

*Printed name and title*

AO 93 (Rev. 11/13) Search and Seizure Warrant (Page 2)

<b>Return</b>		
Case No.: 2:23-mj-00050-JAG	Date and time warrant executed:	Copy of warrant and inventory left with:
Inventory made in the presence of :		
Inventory of the property taken and name of any person(s) seized:		
<b>Certification</b>		
I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant to the designated judge.		
Date:		
<i>Executing officer's signature</i>		
<i>Printed name and title</i>		